SUBMITTED

TRANSCRIPT OF RECORD

SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, [redacted] 1925

No. [redacted] 199

WILLIAM A. RHEA, PETITIONER,

vs.

THOMAS C. SMITH

ON WRIT OF CERTIORARI TO THE SUPREME COURT OF THE STATE OF MISSOURI

PETITION FOR CERTIORARI FILED AUGUST 17, 1925

CERTIORARI GRANTED OCTOBER 19, 1925

(31,409)

(31,409)

SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, 1925

No. 686

WILLIAM A. RHEA, PETITIONER,

vs.

THOMAS C. SMITH

ON WRIT OF CERTIORARI TO THE SUPREME COURT OF THE STATE OF MISSOURI

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[fol. 1] [Caption omitted]

[fol. 2] **IN CIRCUIT COURT OF JASPER COUNTY, MISSOURI, AT JOPLIN, APRIL TERM, 1922**

No. 30164

WILLIAM A. RHEA, Plff.,

vs.

THOMAS C. SMITH, Deft.

JUDGMENT—May 20, 1922

Now at this day this cause comes on for trial, the plaintiff appears by Thomas Hackney, his attorney, the defendant by S. W. Bates, his attorney, and both parties announce ready, waive a jury and submit this cause to the court for trial. After hearing all the evidence and being fully advised in the premises the court finds the issues in favor of the defendant.

It is therefore ordered and adjudged by the court that the plaintiff take nothing by means of his suit herein; that this cause be and the same is hereby dismissed; that the defendant be discharged and recover of and from the plaintiff the costs of this cause and that execution issue therefor

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[fol. 3] IN CIRCUIT COURT OF JASPER COUNTY

[Title omitted]

ORDER ALLOWING APPEAL—May 20, 1922

Now comes the plaintiff and files herein his affidavit for an appeal, said affidavit being by the court examined and deemed sufficient an appeal in this cause is granted to the Supreme Court of this State.

Clerk's certificate to foregoing papers omitted in printing.

[fol. 4] IN SUPREME COURT OF MISSOURI, APRIL TERM, 1924

No. 24056

WILLIAM A. RHEA, Appellant,

vs.

THOMAS C. SMITH, Respondent

Appeal from the Circuit Court of Jasper County, Division Number Two

Hon. Grant Emerson, Judge

Appellant's Abstract of Record from Circuit Court of Jasper County—Filed March 13, 1924

CAPTION

This suit was instituted in the Circuit Court of Jasper County, Missouri, at Carthage, on the 11th day of February, 1922, by the filing of the plaintiff's petition as follows (caption and signature omitted):

PETITION—Filed February 11, 1922

Count I

Plaintiff for cause of action against defendant states that plaintiff [fol. 5] is the owner in fee simple and entitled to the possession of the following described real estate situate in the County of Jasper and State of Missouri, to-wit: The west half of lots nine (9) and ten (10) of the northwest fractional quarter of Section two (2) and also fifteen (15) acres off of the east end of lot ten (10) of the northeast fractional quarter of section three (3), all in township twenty-nine (29), range thirty-three (33).

Plaintiff further states that the defendant is in possession of said real estate and unlawfully retains the possession thereof from plaintiff and claims some interest therein adverse to the plaintiff, but that in fact the defendant does not own any right, title or interest in and to any of said real estate.

Plaintiff further states that the reasonable value of the monthly rents and profits of said real estate is fifty dollars ($50.00).

Wherefore plaintiff prays the court to ascertain and determine and adjudge the title to said real estate as between plaintiff and defendant and to adjudge and decree that plaintiff is the owner in fee simple thereof and that defendant has no right, title or interest therein and that plaintiff is entitled to the possession of said real estate and that he recover of defendant the monthly rents and profits thereof and that plaintiff be awarded the possession of said

real estate and said rents and that the court issue all such writs and process to recover the possession and rents as may be necessary and for cost of suit.

[fol. 6] Count II

Plaintiff for another and further cause of action against defendant states that on the — day of January, 1922, plaintiff was lawfuly entitled to the possession of the following described real estate situate in the County of Jasper and State of Missouri, to-wit: the west half of lots nine (9) and ten (10) of the northwest fractional quarter of section two (2) and also fifteen (15) acres off of the east end of lot ten (10) of the northeast fractional quarter of section three (3), all in township twenty-nine (29), range thirty-three (33); that afterward, on the — day of January, 1922, defendant wrongfully and unlawfully entered into possession of said real estate and now wrongfully retains same from the plaintiff; that the monthly value of the lands and profits from said real estate is fifty dollars ($50.00) and that plaintiff has been damaged by reason of the wrongful entry and detention of said premises by defendant in the sum of five hundred dollars ($500.00).

Wherefore plaintiff prays judgment against defendant for the possession of said real estate and for his damages in the sum of five hundred dollars ($500.00), together with fifty dollars ($50.00) per month as the monthly value of the rents and profits of said premises and for costs.

Answer

"Comes now the defendant and waives service of summons and process in the above cause and enters his appearance therein.

[fol. 7] "Defendant for answer to plaintiff's petition filed in said cause denies each and every allegation in said petition contained.

Wherefore, having fully answered defendant prays to be discharged with his costs."

Minute Entry of Order Transferring Cause

On March 14, 1922, and during the February term of said court the cause was on written stipulation of the parties transferred to Division No. 2 of the Circuit Court of said County at Joplin.

Record Entries of Trial

Record Entry of Judgment

The cause came on for trial in said Circuit Court at Joplin on May 20, 1922, at the April term of said court, a jury being waived, and resulted in a finding and judgment on said day in favor of the defendant.

RECORD ENTRY OF ORDER OVERRULING MOTION FOR NEW TRIAL

Afterwards on the 20th day of May, 1922, and within four days after the rendition of said judgment plaintiff filed his motion for new trial in said cause, which was on said day taken up, heard and overruled by the court, all of which appeared by the following order entered in said cause:

"Now on this day comes the plaintiff and files his motion for new trial in this cause, which motion is by consent taken up, and being seen, heard and fully understood by the court is overruled, plaintiff excepting."

RECORD ENTRY OF ORDER ALLOWING APPEAL

Afterwards on the said 20th day of May, 1922, during said term of court, plaintiff filed his affidavit for an appeal in this cause, and the affidavit being deemed sufficient an appeal was allowed by said court to the Supreme Court of Missouri, and an order was entered giving [fol. 8] plaintiff until on or before the 3rd day of the September, 1922, term of said court to file his bill of exceptions. The appeal was duly taken.

Afterwards on the 17th day of June, 1922, the plaintiff presented to the judge of said court his bill of exceptions which was allowed, signed and duly filed in said court and made a part of the record in said cause, which said bill of exceptions is in words and figures as follows, to-wit (caption omitted):

Bill of Exceptions—Filed June 17, 1922

CAPTION

Be it remembered, that upon the trial of the above entitled cause on the 20th day of May, 1922, the same being the 30th judicial day of the April, 1922, term of the said Circuit Court within and for the County of Jasper and State of Missouri, before the Honorable Grant Emerson, judge of Division Number Two of said court, the following proceedings were had in this cause, to-wit:

APPEARANCES OF COUNSEL

Thomas Hackney and H. W. Blair, attorneys for plaintiff; S. W. Bates and W. R. Robertson, attorneys for Defendant.

Agreed Statement of Facts

It is admitted that Blanche H. Whitlock was the owner of the property in controversy on the 10th day of January, 1921. It is admitted that on that day a judgment was entered in the District Court of the United States for the Southwestern Division of the Western [fol. 9] District of Missouri, at Joplin, of which the following is a copy:

In the District Court of the United States for the Southwestern Division of the Western District of Missouri

Catherine K. Newton, Plaintiff,

v.

William A. Rhea and Mont B. Mining Company (Impleaded with First National Bank of Carthage, Missouri, et al.), Defendants,

and

William H. Whitlock and Blanche H. Whitlock, Plaintiffs,

v.

William A. Rhea and Mont B. Mining Company (Impleaded with First National Bank of Carthage, Missouri, et al.), Defendants.

(Consolidated for Trial)

Order of Dismissal of District Court in the Case of Newton vs. Rhea—Filed January 10, 1921

Now at this day this cause comes on again for hearing on the mandate of the Circuit Court of Appeals filed herein, whereupon in conformity with said mandate on motion of defendants, it is ordered, adjudged and decreed by the court, as follows:

1. That the order, judgment and decree of this court hereto entered in this cause be and the same is hereby set aside, vacated and for naught held and esteemed.

2. That the complainants' several bills of complaint herein be and they are hereby dismissed with prejudice and the defendants fully discharge therefrom.

3. That defendants, William A. Rhea and Mont B. Mining Company have and recover of the complainants, Catherine K. Newton, William H Whitlock and Blanche H. Whitlock all their costs in [fol. 10] this consolidated action expended and that writs of fieri facias issue herein for the collection of said costs.

Arba S. Van Valkenburgh, District Judge.

[File endorsement omitted.]

OFFERS IN EVIDENCE

Mr. Hackney: I offer in evidence Exhibit B, a deed made by the United States marshal, W. A. Shelton, under a sale of the west half of lots nine and ten of the northwest fractional quarter of section two, township twenty-nine, range thirty-three; sale occurring on the first day of October, 1921, at the county court house door in the City of Joplin during the session of the State Circuit Court, and at said sale William A. Rhea became the highest and best bidder and the property was stricken off and sold to him; that said marshal's deed is dated the 24th day of October, 1921, and filed for record in the recorder's office of Jasper County on the 26th day of October, 1921, and recorded in deed book 320 at pages 139 and 140.

Said Exhibit B being in words and figures as follows, to-wit:

EXHIBIT B TO OFFER IN EVIDENCE

United States Marshal's Deed

To all to whom these presents shall come I, W. A. Shelton, United States Marshal for the Western District of Missouri, send Greeting:

Whereas, on the 10th day of January, 1921, a judgment for costs [fol. 11] was rendered in the District Court of the United States for the Southwestern Division of the Western District of Missouri at Joplin in favor of William A. Rhea and Mont B Mining Company, and against Catherine K. Newton, William H. Whitlock and Blanche H Whitlock which costs have been taxed in the sum of $8,890.20, and

Whereas, a writ of execution was on the 22nd day of July, 1921, issued by the clerk of said court on said judgment and to me directed and delivered on July 29, 1921, by virtue of which said execution I, the said marshal, did on the 29th day of July, 1921, levy upon and seize all the right, title, interest and estate of the said Catherine K. Newton, William H. Whitlock and Blanche H. Whitlock, and each of them, of, in and to the following described real estate situate in the County of Jasper in the State of Missouri, to-wit:

Lot twelve (12) in Cassil Place, an addition to the City of Carthage; also the west one-half of lots nine (9) and ten (10) of the northwest fractional quarter of section two (2) township twenty-nine (29) range thirty-three (33), and having previously to the day of sale hereinafter mentioned given at least four (4) weeks' notice of the time, terms and place of sale and of the real estate to be sold and where situate as the law directs by publication of such notice once a week for at least four weeks prior to such sale in the Carthage Daily Democrat, a newspaper printed regularly, issued and having a general circulation in said county and state where said real estate is situate; by virtue of which said execution and notice I did on the 1st day of October, 1921, between the hours of nine o'clock in the forenoon [fol. 12] and five o'clock in the afternoon of said day, agreeably to

said notice at the County Court House in the City of Joplin in said county and state, and during the session of the Circuit Court of said county at the September term thereof for the year 1921, expose to sale at public auction for ready money all the right, title, interest and estate of said Catherine K. Newton, William H. Whitlock and Blanche H. Whitlock, and for each of them in and to the above described real estate, and William A. Rhea of Carthage, Mo., being the highest bidder for said real estate at the aggregate price and sum of two hundred dollars ($200.00), having bid one hundred dollars ($100.00) on said Lot Twelve (12) in Cassil Place and having bid one hundred dollars ($100.00) on the west half of said lots nine (9) and ten (10), all the said real estate was stricken off and sold to said William A. Rhea for the sums bid by him as aforesaid.

Now, therefore, in consideration of the premises and of the said sum of two hundred dollars ($200.00) to me, the said marshal, in hand paid by the said William A Rhea, the receipt whereof I do hereby acknowledge, and by virtue of the authority in me vested by law I, W. A. Shelton, United States marshal as aforesaid, do hereby assign, transfer and convey to the said William A. Rhea all the right, title, interest and estate of the said Catherine K. Newton, William H. Whitlock and Blanche H. Whitlock, and each of them, of, in and to the above described real estate that I might sell as marshal as aforesaid by virtue of the aforesaid execution and notice.

[fol. 13] To have and to hold the right, title, interest and estate hereby conveyed into the said William A. Rhea, his heirs and assigns forever, with all the rights and appurtenances thereunto belonging.

In witness whereof, I, W. A. Shelton, United States marshal of the Western District of Missouri, have hereunto set my hand this 24th day of October, A. D. 1921.

W. A. Shelton, United States Marshal for the Western District of Missouri.

UNITED STATES OF AMERICA,
State of Missouri, Western District, ss:

Be it remembered, that on the 24th day of October, 1921, and during the regular session of the District Court of the United States for the Western Division of the Western District of Missouri, before Hon. Arba S. Van Valkenburgh, Judge of said court, came into open court W. A. Shelton, United States marshal for the Western District of Missouri, and personally known to the judge of said court to be such officer, and in open court acknowledged that he executed the above and foregoing deed as such marshal for the uses and purposes therein mentioned; and this certificate of acknowledgment was by said court ordered to be endorsed hereon.

In testimony whereof, I, E. R. Durham, clerk of said court, have hereunto set my hand and affixed the seal of said court. Done at my office in Kansas City in said District this 24th day of October, 1921.

Edwin R. Durham, Clerk United States District Court, by H. C. Miller, Deputy. (Seal.)

[fol. 14] Filed for record October 26, 1921, at 1:40 o'clock P. M. and recorded in Deed Book 320 at pages 139 and 140.

Ed Gerkey, Recorder of Deeds of Jasper County, Missouri.

Mr. Hackney: I offer in evidence Exhibit C, a marshal's deed made by I. K. Parshall, United States marshal, covering fifteen acres off of the east end of lot ten of the northeast fractional quarter of section three, township twenty-nine, range thirty-three. The sale was on the 28th day of January, 1922, at the county court house door, at the door of the county court house in Jasper County, and W. A. Rhea became the highest and best bidder for said tract. Both said marshal's deeds being under writs of fiere facias on the judgment dated the 10th day of January, 1921.

Said Exhibit C being in words and figures as follows, to-wit:

EXHIBIT C TO OFFER IN EVIDENCE

United States Marshal's Deed

To all to whom these Presents shall come I, I. K. Parshall, United States Marshal for the Western District of Missouri, send Greeting:

Whereas, on the 10th day of January, 1921, a judgment for costs was rendered in the District Court of the United States for the southwestern division of the Western District of Missouri at Joplin in favor of William A. Rhea and Mont B Mining Company, and against [fol. 15] Catherine K. Newton, William H. Whitlock and Blanche H. Whitlock, of which costs duly taxed in said cause there remains an unpaid balance of $8,714.70, and

Whereas, an alias writ of execution was on the 20th day of December, 1921, issued by the clerk of said court on said judgment and to me directed and delivered on December 22, 1921, by virtue of which said execution I, the said marshal, did on the 22nd day of December, 1921, levy upon and seize all the right, title, interest and estate of the said Catherine K. Newton, William H. Whitlock and Blanche H. Whitlock, and each of them, of, in and to the following described real estate situate in the County of Jasper in the State of Missouri, to-wit: Fifteen (15) acres off of east end of lot ten (10) of the northeast fractional quarter of section three (3), township twenty-nine (29), range thirty-three (33); and having previously to the day of sale hereinafter mentioned given at least four (4) weeks' notice of the time, terms and place of sale and of the real estate to be sold and where situated as the law directs by publication of such notice once a week for at least four weeks prior to such sale in the Carthage Daily Democrat, a newspaper printed regularly, issued and having a general circulation in said county and state where said real estate is situated; by virtue of which said execution and notice I did on the 28th day of January, 1922, between the hours of nine o'clock in the

forenoon and five o'clock in the afternoon of said day, agreeably to said notice, at the County Court House door in the City of Joplin in said county and state, and during the session of the Circuit Court of [fol. 16] said county at the January term thereof for the year 1922, expose to sale at public auction to the highest bidder for ready money all the right, title, interest and estate of said Catherine K. Newton, William H. Whitlock and Blanche H. Whitlock, and each of them in and to the above described real estate, and William A. Rhea of Carthage, Mo., being the highest and best bidder for said real estate at the price and sum of twenty-five dollars ($25.00), the said real estate was stricken off and sold to said William A. Rhea for the sum bid by him as aforesaid.

Now, therefore, in consideration of the premises and of the said sum of twenty-five dollars ($25.00) to me, the said marshal, in hand paid by the said William A. Rhea, the receipt whereof I do hereby acknowledge, and by virtue of the authority in me vested by law, I, I. K. Parshall, United States marshal as aforesaid, do hereby assign, transfer and convey to the said William A. Rhea all the right, title, interest and estate of the said Catherine K. Newton, William H. Whitlock and Blanche H. Whitlock, and each of them, of, in and to the above described real estate that I might sell as marshal as aforesaid by virtue of the aforesaid execution and notice.

To have and to hold the right, title, interest and estate hereby conveyed unto the said William A. Rhea, his heirs, and assigns forever, with all the rights and appurtenances thereunto belonging.

In witness whereof, I, I. K. Parshall, United States marshal of [fol. 17] the Western District of Missouri, have hereunto set my hand this 31st day of January, A. D. 1922.

I. K. Parshall, United States Marshal for the Western District of Missouri.

UNITED STATES OF AMERICA,
State of Missouri, Western District, ss:

Be it remembered, that on the 31st day of January, 1922, and during the regular session of the District Court of the United States for the western division of the Western District of Missouri, before Hon. Arba S. Van Valkenburgh, judge of said court, came into open court I. K. Parshall, United States marshal for the Western District of Missouri, and personally known to the judge of said court to be such officer, and in open court acknowledged that he executed the above and foregoing deed as such marshal for the uses and purposes therein mentioned; and this certificate of acknowledgment was by said court ordered to be endorsed hereon.

In testimony whereof, I, E. R. Durham, clerk of said court, have hereunto set my hand and affixed the seal of said court. Done at my office in Kansas City in said district this 31st day of January, 1922.

Edwin R. Durham, Clerk United States District Court, by H. C. Spaulding, D. C. [L. S.]

Filed for record February 1, 1922, at 8:40 o'clock A. M. and recorded in Deed Book 320 at pages 354 to 355.

Ed Gerkey, Recorder Jasper County, Missouri.

[fol. 18] ADMISSIONS OF DEFENDANT

It is admitted that defendant, Thomas C. Smith, purchased the property in controversy from Blanche H. Whitlock and William H. Whitlock, her husband, and received a warranty deed therefor on the 5th day of April, 1921, deed filed for record the same day in the recorder's office of Jasper County, consideration five thousand dollars, $2,800.00 paid in cash to Blanche H. Whitlock and purchaser, Thomas C. Smith, assumed the payment of a mortgage for the balance of the purchase price, the mortgage being held by Nelson Loan Company of Kansas City. It is admitted that the mortgage was made in December, 1920, and duly recorded.

It is admitted that the past rents and profits up to this time may be taken as $50.00 and that the value of the monthly rents and profits for the future at $10.00 per month.

It is admitted that Thomas C. Smith has been in possession of the property ever since the date of his purchase on the 5th day of April, 1921.

It is admitted that both of the marshal's sales were duly published and advertised as recited in the several deeds.

OBJECTIONS OF DEFENDANT TO OFFERS IN EVIDENCE

Mr. Robertson: Defendant objects to the introduction of Exhibit A, the purported judgment upon which the deeds are alleged to be based for the reason that the said purported judgment does not fix or determine the amount of the costs, or the kind or character to be taxed therein, and there is nothing in any of the exhibits that [fol. 19] have been offered which shows or tends to show that any costs have been taxed therein as required by law and said judgment is incompetent, irrelevant and immaterial.

Defendant objects to the introduction of Exhibit B, the purported marshals' deed, for the reason that the same is incompetent, irrelevant and immaterial, and for the further reason that it does not convey a title that is superior to the title held by this defendant and the deed is not so executed and acknowledged as to become prima facie evidence of the facts therein recited and shows upon its face that the sale was not had at the place or in the manner provided for and required by law and conveys no title superior to the title of this defendant.

Objection overruled and deed admitted in evidence.

As to Exhibit C, defendant offers the same objection as to Exhibit B.

Objection overruled and deed admitted in evidence.

It is admitted there was no transcript of the judgment in the Federal Court filed with the circuit clerk or clerk of the Circuit Court of Jasper County, Missouri.

Mr. Hackney: Plaintiff offers in evidence the two writs of execution described in the marshals' deeds, together with marshals' returns on each writ.

Mr. Robertson: Defendant objects for the reason incompetent, irrelevant and immaterial, and they are not sufficient upon which to base a sale, marshal's deed, and the returns are insufficient.

Objection overruled and writs admitted in evidence.

Said writs and returns thereon, being in words and figures as follows, to-wit:

[fol. 20] EXHIBIT IN EVIDENCE

UNITED STATES OF AMERICA,
Southwestern Division of the Western District of Missouri, set:

The President of the United States of America to the Marshal of the Western District of Missouri, Greeting:

Whereas, on the 10th day of January in the year of our Lord one thousand nine hundred and twenty-one at our District Court of the United States for the Southwestern Division of the Western District of Missouri, before our judges thereof, William A. Rhea and Mont B. Mining Company recovered against Catherine K. Newton, William H. Whitlock and Blanche H. Whitlock the sum of — in a cause decided in said court, together with $8,890.20 costs and charges in that behalf expended, which to the said William A. Rhea and Mont B. Mining Company were adjudged as appears to us of record.

These are, therefore, to command you that of the goods and chattels, lands and tenements, of the said Catherine K. Newton, William H. Whitlock and Blanche H. Whitlock you cause to be made the sum so adjudged against them with the costs aforesaid, and that you have the same before the judges of our said court on the 2d Monday of January next, to render the same to the said William A. Rhea and Mont B. Mining Company and that you certify to our said judges how you executed this writ. Hereof fail not, and have you then and there this writ.

[fol. 21] Witness the Honorable William H. Taft, Chief Justice of the Supreme Court of the United States, the 22nd day of July, A. D. 1921.

Issued at office in Joplin, Missouri, under the seal of said District Court, the day and year last aforesaid.

Edwin R. Durham, Clerk, by Alta Ruffin, Deputy Clerk. (Seal.)

(Costs itemized and endorsed on writ aggregate $8,890.20.)

Marshal's Return

I, W. A. Shelton, United States marshal for the Western District of Missouri, do hereby certify that I received the within writ on the 29th day of July, 1921, and that I executed same on the said day by levying upon and seizing all the right, title and interest of the within named Catherine K. Newton, William H. Whitlock and Blanche H. Whitlock, of, in and to the following described real estate situated in the County of Jasper and State of Missouri, to-wit: Lot twelve (12) in Cassil Place, an addition in the City of Carthage; also the west half of lots nine (9) and ten (10) of the northwest fractional quarter of section two (2), township twenty-nine (29) range thirty-three (33); and afterwards I did advertise the said real estate for sale by publication of notice of sale, giving the time, terms and place of sale and a description of the real estate to be sold and where situated, which said notice I caused to be published once a week for at least four weeks prior to said sale in the [fol. 22] Carthage Daily Democrat, a newspaper printed, regularly issued and having a general circulation in said county and state where said real estate is situated, a copy of said notice with printer's affidavit proving publication of same being hereto attached and made a part hereof, and by virtue of said notice and in pursuance thereof I did on the 1st day of October, 1921, between the hours of nine o'clock in the forenoon and five o'clock in the afternoon of said day, agreeably to said notice, at the County Court House door in the City of Joplin in said county and state, and during the session of the Circuit Court of said county during the September term thereof for the year 1921, expose for sale at public auction for ready money, all the right, title, interest and estate of said Catherine K. Newton, William H. Whitlock and Blanche H. Whitlock, and each of them, in and to the above described real estate and at said sale William A. Rhea of Carthage, Missouri, being the highest bidder for said real estate at the aggregate price and sum of two hundred dollars ($200.00) having bid one hundred dollars ($100.00) on said lot twelve (12) in Cassil Place, and having bid one hundred dollars ($100.00) on the said west half of lots nine (9) and ten (10), all the said real estate was stricken off and sold to said William A. Rhea for the sum so bid by him as aforesaid and said William A. Rhea having paid to me the said sum of two hundred dollars ($200.00), the amount of his bid, I executed to him a deed for said real estate as the law directs.

I further certify that I have applied the proceeds of said sale, as follows:

[fol. 23] Marshal's fees—serving writ	$2.00
3% commission	6.00
Executing deed prepared by attorney	1.00
Total	9.00
Balance brought forward	$9.00

Marshal's expenses:

Paid Carthage Daily Democrat for publication of sale notice	$15.00
Paid for internal revenue stamp on deed	.50
Total marshal's fees and expenses	$24.50

and at the request of attorney for said execution creditors I have applied out of the proceeds of said sale the sum of $81.45, being the full amount of witness fees endorsed on said writ and have transmitted said sum to the clerk of said court at Joplin, for distribution and I have further applied the balance of the proceeds of said sale, to-wit: the sum of $94.05 to the costs adjudged in favor of William A. Rhea and Mont B. Mining Company, and have paid same to their attorney, Thomas Hackney.

I have made diligent search for and failed to find in this state any other goods, chattels, lands or tenements belonging to either of said execution debtors on which to levy this writ, and I therefore return this writ not satisfied.

W. A. Shelton, United States Marshal.

[fol. 24] EXHIBIT IN EVIDENCE

UNITED STATES OF AMERICA:
Southwestern Division of the Western District of Missouri, set:

The President of the United States of America to the Marshal of the Western District of Missouri, Greeting:

Whereas, on the 10th day of January in the year of our Lord one thousand nine hundred and twenty-one at our District Court of the United States for the Southwestern Division of the Western District of Missouri, before our judges thereof, William A. Rhea and Mont B. Mining Company recovered against Catherine K. Newton, William H. Whitlock and Blanche H. Whitlock the sum of — in a cause decided in said court, together with $8,890.20 costs and charges in that behalf expended, which to the said William A. Rhea and Mont B. Mining Company were adjudged as appears to us of record.

These are, therefore, to command you, that of the goods and chattels, lands and tenements, of the said Catherine K. Newton, William H. Whitlock and Blanche H. Whitlock you cause to be made the sum so adjudged against them with the costs aforesaid, and that you have the same before the judges of our said court on the 2nd Monday of January next, to render the same to the said William A. Rhea and Mont B. Mining Company and that you certify to our said judges how you executed this writ. Hereof fail not, and have you then and there this writ.

[fol. 25] Witness the Honorable William H. Taft, Chief Justice of the Supreme Court of the United States, the 20th day of December, A. D. 1921.

Issued at office, in Joplin, Missouri, under the seal of said District Court, the day and year last aforesaid.

Edwin R. Durham, Clerk, by Alta Ruffin, Deputy Clerk.

Endorsed on back as follows:

Costs on Mandate Cir. Court of Appeals	$73.90
(Witness fees $81.45 paid on former execution.)	
Costs as per order filed June 15, 1921	8,734.85
	$8,808.75
Credit net proceeds on former	94.05
	$8,714.70

Marshal's Return on Execution

I, I. K. Parshall, United States marshal for the Western District of Missouri, do hereby certify that I executed the within writ in said district on the 22nd day of December, 1921, by levying upon and seizing all the right, title, interest and estate of the within named Catherine K. Newton, William H. Whitlock and Blanche H. Whitlock, and each of them in and to the following described real estate situate in the County of Jasper in the State of Missouri, towit: Fifteen (15) acres off of east end of lot ten (10) of the northeast fractional quarter of section three (3) township twenty-nine (29), range thirty-three [fol. 26] (33); and afterwards on the 28th day of January, 1922, after four (4) weeks' advertisement of the notice of sale of said real estate duly published in the Carthage Daily Democrat, as per proof of publication thereto attached, I did sell said real estate to the highest bidder for cash at the County Court House door of the City of Joplin in said county and state to William A. Rhea, the highest and best bidder for the sum of twenty-five dollars ($25.00) and did duly execute to him a deed for said real estate as such purchaser.

Out of the proceeds of sale I have applied the sum of $18.25 to the payment of costs incurred on this writ, leaving the sum of $6.75 to apply on the debt of said execution and I further certify that I have made a diligent search for and fail to find any other property of either of said debtors in said execution on which to levy the balance of the same.

I therefore return this writ unsatisfied.

I. K. Parshall, United States Marshal.

This was all the evidence.

Defendant's Requested Instructions

The plaintiff thereupon asked the court to give the following declarations of law, which were by the court refused, the plaintiff at the time duly excepting and now excepting to the action, ruling and refusal of the court to give said declarations of law, and each thereof.

I

The court declares the law to be that the judgment of the United States District Court for the Southwestern division of the Western [fol. 27] District of Missouri, read in evidence, dated January 10, 1921, became a lien on the land of Blanche H. Whitlock, the land in question, on the date of the rendition of said judgment in the Federal Court at Joplin, in Jasper County, Missouri, and that the marshal's sales of the property in controversy in this suit and the purchase thereof by the plaintiff, vested in plaintiff a title superior to that claimed by the purchase by the defendant from said Blanche H. Whitlock, which purchase was made on the 5th day of April, 1921.

Refused.

II

The court declares the law to be, under the admitted facts in this case, that the plaintiff, by his purchases at the marshal's sales, and by virtue of the marshal's deeds, read in evidence, became the owner of the land in controversy in this suit and that his title thereto is superior to the claim of defendant, and that plaintiff is entitled to a judgment, establishing his title in fee to said land and also entitled to recover fifty dollars ($50.00), as damages for use of the property, and ten dollars ($10.00) per month for future rents and profits.

Refused.

III

The court declares the law to be that the judgment of the Federal District Court of Joplin, Missouri, rendered on January 10th, 1921, became a lien on the land in question from the date of its rendition, and it was not necessary that a transcript of such judgment be filed in [fol. 28] the office of the clerk of the Circuit Court of Jasper County, Missouri.

Refused.

No declarations of law were given by the court.

JUDGMENT

Thereupon, during said regular term of court, on the 20th day of May, 1922, the court found the issues and rendered judgment in favor of the defendant, Thomas C. Smith.

MOTION TO SET ASIDE VERDICT AND FOR A NEW TRIAL

And afterward, during said regular term of court, and within four days after the rendition of the decision and judgment aforesaid,

to-wit: On the 20th day of May, 1922 the plaintiff filed his motion for a new trial in said cause as follows (caption and signature omitted):

"Now comes the plaintiff, within four days after the rendition and finding of the judgment herein, and during the same regular term of said court, and moves the court to set aside the finding and judgment herein and grant plaintiff a new trial in this cause for the reasons following, to-wit:

Because the court erred in refusing to give the declarations of law numbers 1, 2 and 3, asked by the plaintiff.

Because the finding and judgment of the court is for the wrong party.

Because the findings and judgment of the court should have been for the plaintiff.

Because the court erred in finding for the defendant under the pleadings, evidence and admitted facts."

[fol. 29] Order Overruling Motion for New Trial

Which said motion coming on to be heard was by the court on the 20th day of May, 1922, and during said regular term of court, overruled, the plaintiff at the time duly excepting and now excepting to the action of the court in overruling said motion.

Order Allowing Appeal

Thereupon, on the 20th day of May, 1922, and during said regular term of court, the plaintiff filed his affidavit for an appeal in this cause and an appeal was allowed by the court to the Supreme Court of this state, and plaintiff given until on or before the third day of September, 1922, term of this court within which to file his bill of exceptions.

Said affidavit in appeal being in words and figures as follows (caption omitted):

Thos. Hackney, attorney for the plaintiff in the above entitled cause, being sworn, upon his oath says, that the appeal prayed for by plaintiff is not made for vexation or delay, but because he believes plaintiff aggrieved by the judgment and decision of the court.

Thos. Hackney.

Subscribed and sworn to before me this 20th day of May, 1922. A. E. Taggart, Clerk.

The order of record granting said appeal is as follows (caption omitted:)

"Now comes the plaintiff and files herein his affidavit for an appeal, said affidavit being by the court examined and deemed sufficient, and appeal in this cause is granted to the Supreme Court of this state."

[fols. 30-32] ORDER SETTLING BILL OF EXCEPTIONS

And now here, on this 17th day of June, 1922, and within the time so allowed by the court for filling bill of exceptions herein, the plaintiff presents this, his Bill of Exceptions, and prays the court that the same may be signed, sealed and made a part of the record herein, which is accordingly done.

Witness my hand as judge of said division of said court, this the day and year last above written.

Grant Emerson, Judge of Division Number Two, Jasper County Circuit Court.

[File-endorsement omitted.]

[fol. 33] IN SUPREME COURT OF MISSOURI, DIVISION NO. 2

[Title omitted]

ARGUMENT AND SUBMISSION—April 17, 1924

Come now the said parties, by attorneys, and after argument herein, submit this cause to the Court.

IN SUPREME COURT OF MISSOURI, DIVISION NO. 2

[Title omitted]

ORDER TRANSFERRING CAUSE TO COURT EN BANC—October 10, 1924

Now, at this day, Judge John T. White having dissented from the opinion of Judge David E. Blair, and Judge R. F. Walker being absent, and there being no opinion of the Court herein, it is considered and ordered by the Court of its own motion that this cause be, and the same is hereby, transferred to Court en Banc.

[fol. 34] IN SUPREME COURT OF MISSOURI EN BANC

[Title omitted]

ARGUMENT AND SUBMISSION—January 24, 1925

Come now said parties, by attorneys, and after argument herein, submit this cause to the Court.

IN SUPREME COURT OF MISSOURI EN BANC

[Title omitted]

JUDGMENT—April 13, 1925

Now, at this day, come again the parties aforesaid, by their respective attorneys, and the Court here being now sufficiently advised of and concerning the premises, doth consider and adjudge that the judgment aforesaid, in form aforesaid, by the said Circuit Court of Jasper County rendered, be in all things affirmed, and stand in full force and effect; and that the said respondent recover against the said appellant his costs and charges herein expended and have therefor execution. (Opinion filed.)

[fol. 35] IN SUPREME COURT OF MISSOURI EN BANC

[Title omitted]

OPINION—Filed April 13, 1925

Suit in two counts. The first to determine title to certain real estate in Jasper county, and the second in ejectment to recover possession of such real estate. There was judgment for the defendant in the trial court, and he appealed.

The facts are undisputed. One Blanche H. Whitlock was the common source of title, and January 10, 1921, owned the property in dispute. On that day a judgment in a certain cause in which she was plaintiff, pending in the United States District Court for the Southern Division of the Western District of Missouri, at Joplin, was dismissed, and the cost of the case adjudged against her in the sum of $8,890.20. No transcript of this judgment was ever filed in the office of the Clerk of the Circuit Court of Jasper county.

On April 5, 1921, Blanche Whitlock conveyed the property in dispute to the defendant, Thomas C. Smith, for a consideration of $5,000, of which $2,800 was paid in cash, the purchaser assuming a mortgage on the premises for the balance.

On July 22, 1921, execution was issued upon the judgment, and by virtue of that execution the United States Marshal sold for $200 to the plaintiff Rhea, a portion of the property in dispute, and by marshal's deed conveyed it to him.

[fol. 36] On December —, 1921, another execution was issued on the judgment under which the marshal sold the remainder of the land in dispute. It was purchased by the plaintiff for $25.00, and conveyance made to him.

It is claimed by appellant that the judgment of the Federal court was the lien on the real estate from its rendition, that he acquired title through the execution sales, and therefore his title was superior to any title acquired by subsequent conveyance of the judgment

debtor. Respondent claims that in the absence of a transcript of the same, filed in the office of the Clerk of the Circuit Court of that county, the judgment of the Federal Court was not a lien, and that the conveyance to respondent prior to the execution sales, passed good title.

The statutes of the State of Missouri relating to the lien of judgments are as follows:

"Sec. 1554. Lien of Judgment in Supreme Court, Courts of Appeals, and Federal Courts in This State.—Judgments and decrees obtained in the Supreme Court, in any United States district or circuit court held within this state, in the Kansas City Court of Appeals or the St. Louis Court of Appeals, shall, upon the filing of a transcript thereof in the office of the clerk of any circuit court, be a lien on the real estate of the person against whom such judgment or decree is rendered, situate in the county in which such transcript is filed." Mo. R. S. 1919.

"Sec. 1555. Lien in Courts of Record Generally.—Judgment and decrees rendered by any court of record shall be a lien on the real estate of the person against whom they are rendered, situate in the county for which the court is held." Mo. R. S. 1919.

[fol. 37] "Sec. 1556. The Commencement, Extent, and Duration of Lien.—The lien of a judgment or decree shall extend as well to the real estate acquired after the rendition thereof as to that which was owned when the judgment or decree was rendered. Such liens shall commence on the day of the rendition of the judgment and shall continue for three years, subject to be revived as hereinafter provided; but when two or more judgments or decrees are rendered at the same term, as between the parties entitled to such judgments or decrees, the lien shall commence on the last day of the term at which they are rendered." Mo. R. S. 1919.

The Federal Statutes affecting the liens of judgments in a Federal Court (Act of 1888), was as follows:

"Sec. 1. Judgments and decrees rendered in a (circuit or) district court of the United States within any state, shall be liens on property throughout such state in the same manner and to the same extent and under the same conditions only as if such judgments and decrees had been rendered by a court of general jurisdiction of such state: Provided, that whenever the laws of any state require a judgment or decree of a state court to be registered, recorded, docketed, indexed or any other thing to be done, in a particular manner, or in a certain office or county, or parish in the State of Louisiana, before a lien shall attach, this act shall be applicable therein whenever and only whenever the laws of such state shall authorize the judgments and decrees of the United States courts to be registered, recorded, docketed, indexed or otherwise conformed to the rules and requirements relating to the judgments and decrees of the courts of the state."

[fol. 38] 2. "The clerks of the several courts of the United States shall prepare and keep in their respective offices complete and con-

venient indices and cross-indices of the judgment records of said courts, and such indices and records shall be at all times open to the inspection and examination of the public."

Section 3 of the Act, amended from time to time, in 1895 was as follows:

3. "That nothing herein shall be construed to require the docketing of a judgment or decree of a United States Court, or the filing of a transcript thereof, in any state office within the same county or the same parish in the State of Louisiana in which the judgment or decree is rendered, in order that such judgment or decree may be a lien on any property within such county, if the clerk of the United States court be required by law to have a permanent office and a judgment record open at all times for public inspection in such county or parish."

I. Section 1554, Mo. R. S. 1919, says, "judgments and decrees obtained in the Supreme Court, in any United States District or circuit court held within this State, in the Kansas City Court of Appeals or the St. Louis Court of Appeals, shall, upon the filing of a transcript thereof in the office of the clerk of the circuit court, be a lien," on real estate in the county.

There are two Federal Districts in this State, as there are three state courts of appeals districts in this State. Can it be said that a judgment rendered by the Supreme Court would be a lien upon the real estate of a judgment defendant in Sole county without filing a transcript of the judgment with the circuit clerk of that county, while [fol. 39] such a transcript would have to be filed in order to make it a lien upon real estate in any other county? Likewise, would a judgment, rendered by the Kansas City Court of Appeals, be a lien upon real estate of the judgment defendant in Jackson county without filing a transcript in the office of the circuit clerk, while it would not be a lien on property in any other county unless such transcript was filed? Certainly that is not the general understanding of the bar, nor is it the correct interpretation of the statute. In such case a transcript must be filed with the circuit clerk of the county where the property is, regardless of where the court happens to sit. In that respect the United States District and Circuit courts are put on the same basis as the state courts having a territorial jurisdiction more than the county.

It is argued by appellant that Section 1554 R. S. 1919 conflicts with the Federal Statute. So it would if Section 3 of the Federal Statute were still in force. The purpose of the Act of 1888, as it existed before the repeal of Section 3, is thus stated by the Federal Circuit Court in the case of Dartmouth Savings Bank v. Bates, 44 Fed. l. c. 548-9:

"It is quite obvious that if Congress or the federal courts had possessed the power to require the clerks of the state courts to enter on the records of these courts the judgments of the federal courts as was provided in the case of judgments of the state courts, that the

rule that the lien of a judgment of a federal court was co-extensive with the territorial jurisdiction of the court would never have been adopted. The process acts did not cover the case, and could not be made to do so. If the courts held a lien was restricted to the county in which the judgment was rendered, this would give a preference to suitors in the state courts, because they could extend the lien of their judgments beyond the county in which they were [fol. 40] rendered by filing transcripts in the clerk's office of other counties; but suitors in the federal courts were denied that privilege. The rule, therefore, was adopted of making the lien co-extensive with the jurisdiction of the court.

" 'This rule resulted in giving suitors in the federal courts a preference over those in the state courts as to the territorial extent of the lien and worked a hardship on the citizens generally. The mass of people relied confidently on the records in the clerk's office of their county disclosing all judgments that were liens on property in the county. Most people were ignorant of the all prevailing lien of a judgment in the federal court, and they bought and sold lands on the faith of what the county records disclosed. The result was that cases of great hardship occurred. Persons who bought and paid for lands on the faith that the records in the county clerk's office showed the condition of the land with reference to judgment liens thereon, afterwards lost their land by reason of the liens of judgments in federal courts held in some other county and often at a distance of hundreds of miles from the county in which the lands laid.' "

"To correct these hardships and to put the suitors in the state and federal courts on an equal footing in respect of the territorial extent of the lien of judgments in the two jurisdictions, in so far as Congress could do it, the Act of August 1, 1888, was passed."

Two significant statements appear in that excerpt: First, that the Federal Court was powerless to cause a clerk of the State circuit court to file a transcript of a judgment of the Federal court; second, [fol. 41] it was important that the people should have one place in which to ascertain whether there was a judgment lien against the property with which they are concerned. The appellant seeks a construction of the Federal Statute the same as it would read if Section 3 had not been repealed. Section 3 provided that there shall be no requirement to file a transcript in any county office if "the Clerk of the United States Court be required by law to have a permanent office and judgment record open at all times for public inspection in such county."

That condition obtained in this case; the Federal Court had an office in Jasper county, containing a judgment record, open at all times for public inspection. If Section 3 had been still in force that provision would have answered the purpose of the law, but Section 3 was repealed and the maintenance of such an office where judgment records are open to inspection has no effect upon the determination of the question at issue. The Act of Congress must be construed according to its terms set out in Sections 1 and 2; it

must be construed with reference to the repeal of Section 3, and some significance must be attached to the Act of Congress in repealing that section. Without that section, transcripts of judgments of a Federal Court were required to be filed in the county records when transcripts of judgments in state courts were required to be so filed. Section 3 relieved a judgment creditor in the Federal Court from that requirement in a certain instance. The repeal of the section shows an intent to make that requirement.

Having in view the purpose of repealing that provision of the Federal Statute, we must construe its remaining provisions. It provides that the judgments of Federal courts, within the State, "shall be liens on property throughout such state in the same manner and to the same extent and under the same conditions only as if such judgments and decrees had been rendered by a court of general [fol. 42] jurisdiction of such state."

It is evident that it was the intention by that statute to place judgments of Federal courts in the same position as judgments of the State court and not to give them any advantage. The lien provided for is on property "throughout such state" in the same manner as judgments of a court of general jurisdiction in the state. That would, of course, apply to all property in the territorial jurisdiction of the court. When a judgment in the Federal court is rendered there is no distinction, as to where the lien applies, between the county where the court happens to sit and any other county within the territorial jurisdiction of the court.

The appellant's argument proceeds upon the theory that because the circuit court is the only State court of general jurisdiction, and because the Federal district and circuit courts are courts of general jurisdiction, the filing of the transcript in the county where the court sits, may be omitted in the case of a Federal court the same as in the State circuit court. Section 1555, R. S. 1919, does not provide for such liens when a judgment is rendered by a court held in the county. It says that a judgment rendered by a court of record shall be a lien on the real estate of the person against whom it is rendered, situate in the county "for which" the court is held, not "in" which. The Federal Court sitting in Jasper county is not held "for" that county any more than for any other county in the western district of Missouri. It is held for the entire District. The court may hear a case in Jasper county and render judgment in the case in Greene county, or Jackson county, or, as some times happens, the court may hear part of the evidence in one county and the remainder in another, and render judgment in a third, and pass upon a motion for rehearing in a fourth. It sits for the entire district, one county is of as much importance as any other, and no more; Jasper county in which the court happened to sit in the present instance is en- [fol. 43] titled to no more advantage than any other county in the district. Apparently the intention was to place the Federal courts on an equality with the state courts of similar territorial jurisdiction.

Evidently it was the policy of the law to have one definite place where a person might go to ascertain whether there are any judgment liens affecting real estate in which he might be interested; he

would not have to go to several places. To say that, in order to place the Federal District Court on equality with the state court, a judgment of that court must be a lien in the county where it is rendered without filing the transcript with the clerk of the circuit court, is to give that court an advantage over the state circuit courts of every other county in that district. For Instance: in the Southern Division of the Western District of Missouri, parties litigant come from counties in every part of the division. Parties to litigation arising in a county distant from where the court is held, upon the rendition of a judgment would have a lien in the county where the court is held, whereas the same party, if the suit were pending in the state court in the county where the cause originated, would not have any such lien until a transcript of the judgment was filed. For instance, suppose a party in Lawrence county should sue a non-resident in the Federal court, and judgment should be rendered in Jasper county where the property of the judgment defendant is. On the theory of the appellant that judgment would be a lien without the filing of a transcript. Whereas, if another suitor in Lawrence county, having the same kind of a case, should sue in the State court of Lawrence county and obtain a judgment at the same time, he could not have a lien on the property of the defendant in Jasper county until he had first filed his transcript. In providing for equality between the judgment of federal courts and state courts, so far [fol. 44] as the lien is concerned, the endeavor was to place them upon an equality with all the state courts of general jurisdiction, and not merely with one particular state court.

The alleged discrimination in favor of a State Court against a Federal Court, sitting in the same county, is only apparent. The provision that the lien of a judgment shall begin from its rendition means on the same day of its rendition. It would take but a short time to transcribe a judgment of the Federal Court and file it with the Clerk of the State Court on the day of its rendition, and thus put it on par with the judgment of the State Court rendered on the same day. A case in point is In Re Jackson Light & Traction Company v. Newton, et al., 269 Fed. 223. That arose in the Federal Court of Appeals for the Fifth District concerning a judgment rendered in Mississippi. The State Statute provided for the enrollment of a judgment in the State Court, in order that it might become a lien upon the property in the county. Judgments of the Federal Court, the Supreme Court, and Chancery courts became liens from the time they were enrolled. Whereas, the judgment of a state court in the county where it was rendered when it was enrolled, became a lien upon the property in that county from the time of its rendition. It is claimed by appellant that this case was not in point because in either case, whether it was a federal judgment or a judgment in a state court, no lien attached until the judgment was enrolled. The enrollment, however, was apparently for the purpose of furnishing evidence that there was a judgment. The lien, of which the enrolled judgment in the local court was evidence, attached from the rendition of the judgment, whereas the lien of the Federal Court and the Supreme Court of the State did not attach

until enrolled in the office of the Clerk of the Circuit Court of the county. The distinction in that case, if there is one in favor of the State Court, was even more pronounced than the requirement of our State Statute in Missouri.

[fol. 45] But under the present law of the State, circumstances easily could arise where a judgment in the Federal Court would have an advantage over a judgment in the State Court, rendered at the same time. Under Section 1556, if more than one judgment is rendered against the same defendant at the same term of the State Circuit Court, the lien of neither judgment begins on the date of its rendition, but the liens of both judgments date from the last day of that term of the court. A judgment in the Federal Court might have an advantage in that the lien would begin from the time the transcript was filed, although it might be rendered later than the two judgments rendered in the State Court but before the expiration of the term at which they were rendered.

The judgment is affirmed

Graves, C. J., Woodson and Walker, JJ., concur. Ragland, J., concurs in result. D. E. Blair, J., dissents in separate opinion. Atwood, J., dissents.

J. T. White, Judge.

[fol. 46] In the Supreme Court of Missouri, en Banc, October Term, 1924, January Call, 1925

No. 24056

William A. Rhea, Appellant,
vs.
Thomas C. Smith, Respondent

Dissenting Opinion

This case was assigned to me in Division Two, where I wrote an opinion holding that the judgment below should be reversed and remanded with directions. My brother White there wrote an opinion, which was labeled a dissenting opinion, and took the contrary view. As there was no opinion in division, the case was transferred to the Court en Banc. Here the majority of the court rejected my opinion and the case was reassigned to Judge White and he has written the opinion of the court. I have carefully considered his opinion and cannot yield my concurrence therein and respectfully dissent. I will use my divisional opinion, omitting the statement of facts. Certain other suggestions have been added.

The sole question, presented by the record blow and by the briefs the statement of facts. Certain other suggestions have been added.

The sole question, presented by the record below and by the briefs and arguments of counsel in this court, is whether or not a judgment of a federal district court is a lien upon real estate of the

judgment debtor, situated in the county where such judgment is [fol. 47] rendered, from the date of its rendition, without a certified transcript thereof having been filed in the office of the clerk of the circuit court of such county. If so, the judgment should be reversed. If not, the judgment should be affirmed.

It is conceded that in Congress rests the sole power to legislate upon the subject of liens of judgments of courts of the federal government. We must, therefore, first look to the acts of Congress. Section 1 of the Act of August 1, 1888 (25 Statutes at Large, 317) reads as follows:

"Judgments and decrees rendered in a circuit or district court of the United States within any state, shall be liens on property throughout such state in the same manner and to the same extent and under the same conditions only as if such judgments and decrees had been rendered by a court of general jurisdiction of such state; Provided, that whenever the laws of any state require a judgment or decree of a state court to be registered, recorded, docketed, indexed or any other thing to be done, in a particular manner, or in a certain office or county, or parish in the State of Louisiana, before a lien shall attach, this act shall be applicable therein whenever and only whenever the laws of such state shall authorize the judgments and decrees of the United States courts to be registered, recorded, docketed, indexed or otherwise conformed to the rules and requirements relating to the judgments and decrees of the courts of the state."

Section 2 of said act throws no particular light upon the subject of our inquiry. It merely provides that clerks of the courts of the United States shall keep records and indices of judgments of said courts. The court of general jurisdiction mentioned in section 1 is the circuit court in Missouri. That court and the supreme court and the several courts of appeals, together with the [fol. 48] county court and the probate court, are courts of record in this state. (Sec. 2323 R. S. 1919.) Section 1555, R. S. 1919, provides that "judgments and decrees rendered by any court of record shall be a lien on the real estate of the person against whom they are rendered, situate in the county for which the court is held." Section 1556 provides that such lien shall commence on the day of rendition and continue for three years.

It is appellant's contention that, as the circuit court is the state court of general jurisdiction and as its judgments are liens upon the real estate of judgment debtors situate in the county for which such court is held and, as section 1 of the federal act, above quoted, provides that judgments of the federal courts "shall be liens on property throughout such state *in the same manner and to the same extent and under the same conditions only*" as judgments rendered by the circuit court, appellant's judgment against Mrs. Whitlock became a lien against the real estate here involved from and after its rendition in the federal court and that appellant's title, acquired by purchase at the sale under execution issued on such judgment, is superior to the title of respondent by virtue of a deed from the judgment

debtor, executed and delivered after such judgment was rendered. To arrive at the correct conclusion, it is necessary to understand the history, nature and extent of liens of federal court judgments prior to the enactment by Congress of the Act of August 1, 1888. At that time judgments of federal courts were liens upon real estate of the judgment debtor, not only in the county where such judgments were rendered, but in all counties within the territorial jurisdiction of the court rendering same.

The majority opinion quotes from the opinion of Judge Caldwell in Dartmouth Savings Bank v. Bates, 44 Fed. 546, where such history is discussed, but omits a very important part of such opinion [fol. 49] and I here quote it in connection with the quotation set out in Judge White's opinion, towit:

"The first clause of the act places judgment liens in a federal court *on the same footing in all respects* as a judgment lien in a state court of general jurisdiction. But the power of congress was not adequate to the task of *extending the territorial operation of a judgment lien* in the mode provided by state laws for a judgment in the state court. Congress was confronted with the difficulty pointed out by Mr. Justice McLean, the law of a state might provide for filing and docketing a transcript of a judgment of a state court in the clerk's office of any county in the state, and in this way extend the lien of a judgment beyond the county in which it was rendered. But there was no federal clerk's office, or other like office, in each county in the state in which a judgment rendered in a federal court could be docketed; and congress could not make it obligatory on the state clerks to docket and enter a judgment of a federal court on their records. But it was entirely competent for the state to require her clerks to perform this service, and the proviso in section 1 of the act declares, in legal effect, that when the laws of a state provide for docketing in her clerks' offices, or other offices, the judgments of federal courts, in the same manner that judgments in her own courts may be docketed, then, and not before, the territorial extent (*in other respects they were already the same*) of the lien of a judgment in a federal court in that state shall be the same as that of a judgment in the state court. Where the laws of a state provide for docketing the judgments of its own courts in any county in the state, but do not make a like provision as to the judgments of the federal court, the act of congress is not operative; and *in such states the lien of a judgment of a federal court continues to be co-extensive with its* [fol. 50] *territorial jurisdiction.*" (Italics my own.)

It is apparent from reading the first section of the act of August 1, 1888, that Congress intended to change the existing rule that federal court judgments are a lien upon lands throughout the territorial jurisdiction of such courts, only in those states which passed laws authorizing federal court judgments to be registered, recorded, docketed, indexed or otherwise conformed to the rules and requirements relating to the judgments and decrees of state courts, and that, where any state has not passed such laws, the rule that federal judgments are a lien throughout the territorial jurisdiction of such courts is still in full force and effect.

In Lineker v. Dillon, 275 Fed. 460, Van Fleet, J., in discussing laws of such character passed by the state of California, said, at page 475:

"I am satisfied that the legislation, whether from inadvertence or otherwise, does not, for the reasons stated, afford that degree of 'conformity' which the act of Congress contemplates as essential to bring it within the latter and put judgments of federal courts on an equality with those of the state; that consequently the act of Congress does not take effect in this state, but the judgments of these courts must be regarded as constituting therein liens on the real estate of judgment debtors throughout the extent of their territorial jurisdiction."

This state has enacted legislation enabling transcripts of federal court judgments to be filed in the offices of the clerks of the circuit courts of the counties of the state and thereupon to become liens upon the real estate belonging to judgment debtors, situate therein, [fol. 51] in the same manner as judgments of courts of one county may be transcripted to another county. (Secs. 1554 and 1583, R. S. 1919.)

Taking by itself the language of that part of section 1 of the federal act preceding the proviso, I think there can be no doubt that the judgment we are considering became a lien upon the property here involved from the day of its rendition. The language "in the same manner and to the same extent and under the same conditions" is broad enough to make a federal court judgment a lien in the county where it is rendered without filing a transcript thereof, *if a judgment of the state court of general jurisdiction constitutes such lien*. "In the same manner" and "under the same conditions" can mean nothing else. "To the same extent" may refer to the kind of property to which such lien attaches or to the territorial extent of the lien or to both. If a state makes its judgments a lien on real estate only, then federal judgments become liens on such property only. If such lien extends only to the county, then the lien of the federal court judgment is so limited. The status of the lien of a judgment of the state court of general jurisdiction fixes the status of the lien of federal court judgments *in every respect*. Such is the only meaning which can fairly be given to section 1 of the federal act.

Respondent argues and the majority of my brethren seem to hold that the repeal by Congress in 1916 (39 Statutes at Large, 531) of section 3 of Act of August 1, 1888, as amended in 1895, shows that it was the intention of Congress to make a federal court judgment a lien upon real estate in the county where same was rendered only upon filing of a transcript therein. Section 3, as enacted, read as follows:

"Nothing herein shall be construed to require the docketing of a judgment or decree of a United States court or the filing of a tran- [fol. 52] script thereof, in any state office within the same county or parish in the State of Louisiana, in which the judgment or decree is

rendered in order that such judgment or decree may be a lien on any property within such county."

In 1895 the following words were added thereto:

"If the clerk of the United States court be required by law to have a permanent office and a judgment record open at all times for public inspection in such county or parish." (28 Statutes at Large, 814.)

The fact of such repeal furnishes respondent with a very plausible argument that section 1 did not originally and does not now make a federal court judgment a lien in the county where rendered unless a transcript thereof is filed in such county. I regard the argument as unsound. We are not advised of the reasons presented to Congress which actuated it in enacting section 3 in the first place or in later repealing said section, after it had been amended. The provision that a federal court judgment should be a lien upon rendition in the county where such judgment was rendered without filing a transcript therein gave an advantage to federal judgment creditors not possessed by judgment creditors *in the courts of those states which require particular steps to be taken in addition to the mere rendition of a judgment before it becomes a lien in the county where rendered* and section 3 tended to prevent the complete harmony and conformity aimed at in section 1. A very good and completely satisfying reason for repealing section 3 is found in the evident purpose of Congress to put federal judgments on exactly the same footing as state judgments. The enactment of section 3 failed to accomplish this in all cases and its repeal did effectually accomplish such purpose in all cases and in every state. It is inconceivable to me, as it is contended in respondent's brief, that, by such repeal, Congress intended [fol. 53] that judgments of federal courts should not become a lien in the county where rendered unless and until a transcript thereof is filed in the circuit clerk's office, while the state court judgment becomes a lien therein without such procedure. Such a purpose would be in hopeless conflict with the purpose expressed in section 1.

Respondent places great reliance upon, and the majority opinion cites, the case of In re Jackson Light & Traction Co. 265 Fed. 389, and same case upon appeal, 269 Fed. 223. Mississippi is one of the states which requires certain subsequent steps to be taken before a state court judgment becomes a lien *even in the county of rendition*, and, of course, under section 1 of the federal act, the same steps had to be taken *in that state* with respect to a federal court judgment before it became a lien. In that case the judgment creditor in the federal court failed to have his judgment enrolled in the proper office in the county until after the judgment debtor went into bankruptcy and it was held that such judgment was not entitled to priority. The reasons advanced by the district court were similar to those advanced by respondent here, towit, that section 3 provided that no transcript was necessary and that its repeal made the filing of such transcript necessary. Holmes, District Judge, said: "Section 3 obviated the necessity of such enrollment, but the repeal of section 3, by the act above quoted, which became effective January 1, 1917, rendered

the same procedure as to a federal court judgment necessary in the county where the judgment was rendered as was required in the other counties of the state in order to obtain a lien." The learned district judge seemingly erred in his reasoning, although his conclusion was correct. The enrollment was in fact necessary under section 1 of the federal act, because such enrollment was necessary in the case of a state court judgment in the count where rendered.

[fol. 54] When the case came to the Circuit Court of Appeals for the Fifth Circuit, no such reasons were given for the affirming the judgment. Section 1 of the federal act was quoted and it was said:

"We cannot see, therefore, where there is any discrimination against the United States Courts when they are put on the same footing with the State Supreme Court, and every other state court at law or in equity where the judgment is not rendered in the same court on whose judgment roll an abstract must be enrolled in order to give it a lien on the property of the judgment debtor."

The fact of the repeal of section 3 of the federal act was not mentioned by the circuit court of appeals and therefore the effect of such repeal was not considered. I think the case lends no support to the contention of respondent here.

The majority opinion, as does respondent, lays much stress upon section 1554 of our statute, which provides that judgments obtained in the supreme court, the court of appeals and federal trial courts shall be liens in *any* county in the state wherein a transcript thereof shall be filed. Apparently this section is one making provision for a lien broader in territorial application than the lien attaching upon mere rendition of the judgment. It apparently has no reference to the latter sort of lien.

It required no action upon the part of the Missouri legislature to give a lien to a judgment of the federal district court. That is the exclusive prerogative of Congress. Therefore, our legislature, in enacting section 1554, undertook to do nothing more than to put federal court judgments upon an equality with state court judgments by authorizing the filing of transcripts thereof in any county of the state and providing for a lien therein upon such filing.

[fol. 55] Section 1554 is the conformity statute of Missouri without the enactment of which the act of Congress of 1888 would have no application whatever to federal court judgments rendered in this state. If that section be construed by us as requiring the filing of a transcript of a federal court judgment in the office of the clerk of the circuit court of the county wherein such federal court judgment is rendered, then Missouri has passed no adequate conformity law and the judgment of appellant must be held to be a lien throughout the territorial jurisdiction of the federal district court which rendered it, including Jasper county (Lineker v. Dillon, supra; Dermott v. Carter, 109 Mo. 21), and respondent's case is not helped in the least, because a sale under execution upon appellant's judgment gave appellant good title to the real estate under either view.

In my opinion, the judgment below should be reversed with di-

rections to the trial court to set aside its judgment for defendant and to enter its judgment finding that, as against the defendant, the plainiff (appellant) is the owner of the real estate here involved and that defendant has no right, title or interest therein and ejecting defendant therefrom, with judgment in plaintiff's favor for the agreed rents and profits.

Atwood, J., concurs herein. David E. Blair.

[fols. 56-61] Petition for rehearing, covering 6 pages, filed April 22, 1925, omitted from this print.

[fol 62] In Supreme Court of Missouri, En Banc

[Title omitted]

Order Denying Petition for Rehearing—May 23, 1925

Now, at this day, the Court having considered and fully understood the motion of the said appellant for a rehearing herein, doth order that the said motion be, and the same is hereby overruled.

In Supreme Court of Missouri

Clerk's Certificate

State of Missouri, set:

I, J. D. Allen, Clerk of the Supreme Court of the State of Missouri, do hereby certify that the above and foregoing is a full, true and complete transcript of the record and proceedings in a cause between William A. Rhea, Appellant, and Thomas C. Smith, Respondent, No. 24,056, as fully as the same appear of record and on file in my office.

In testimony whereof, I hereunto set my hand and affix the seal of said Supreme Court, at my office in the City of Jefferson, State aforesaid, this 14th day of July, 1925.

J. D. Allen, Clerk of the Supreme Court of the State of Missouri. (Seal of the Supreme Court of Missouri.)

[fols. 63 & 64] In Supreme Court of the United States

Order Allowing Certiorari—Filed October 19, 1925

The petition herein for a writ of certiorari to the Supreme Court of the State of Missouri is granted. And it is further ordered that the duly certified copy of the transcript of the proceedings below which accompanied the petition shall be treated as though filed in response to such writ.